



**IT IS ORDERED as set forth below:**

**Date: July 21, 2009**

*James E. Massey*

James E. Massey  
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

\_\_\_\_\_  
IN RE:

CASE NO. 08-80044

Steven Daniel Holtzclaw,

CHAPTER 7

Debtor.  
\_\_\_\_\_

JUDGE MASSEY

First National Bank of Omaha,

Plaintiff,

v.

ADVERSARY NO. 09-6016

Steven Daniel Holtzclaw,

Defendant.  
\_\_\_\_\_

ORDER DENYING MOTION TO DISMISS

At the pretrial conference held on July 21, 2009, counsel for Defendant pointed out that the answer included a motion to dismiss pursuant to Civil Rule 12(b)(6), made applicable by Bankruptcy Rule 7012. Civil Rule 12(b)(6) provides in relevant part:

(b) How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion: . . .

(6) failure to state a claim upon which relief can be granted ; . . .

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. . . .

Motions should not be combined with complaints or answers. A motion is not a pleading, Fed. R. Civ. P. 7(a) (Fed. R. Bankr. 7007). The Court has no way to track a motion buried in a pleading, where the document is filed electronically using a pleading event. Rule 12(b) clearly states that a motion under that subparagraph “must be made before pleading.” As indicated at the pretrial conference, the motion is DENIED as untimely.

\*\*\*END OF ORDER\*\*\*